

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

:

JOINT STATUS REPORT

Plaintiff,

:

- v -

:

07 Civ. 3559 (LAP)

APPROXIMATELY \$84 MILLION ON :
DEPOSIT IN ACCOUNT NO. T-94025 :
IN THE NAME OF THE TREASURY OF :
THE MINISTRY OF FINANCE OF THE :
REPUBLIC OF KAZAKHSTAN AT PICTET :
& CIE, GENEVA, SWITZERLAND, :
FORMERLY ON DEPOSIT IN ACCOUNT :
NO. 1017789E AT CAI INDOSUEZ, :
GENEVA, SWITZERLAND, AND ALL :
INTEREST, INCOME, BENEFITS, AND :
OTHER PROCEEDS TRACEABLE THERETO, :

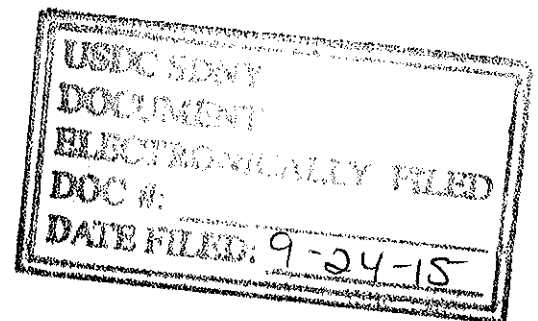
Defendant in rem.

:

-----X

The United States of America and the Government of the Republic of Kazakhstan (the "Parties") respectfully submit this Joint Status Report in response to this Court's order of August 27, 2015, and to apprise the Court of the current status of this matter.

On May 3, 2007, the United States filed this action seeking forfeiture of approximately \$84 million held in an account in Switzerland in the name of the Treasury of the Ministry of



Finance of the Republic of Kazakhstan, plus all interest, income, benefits, and other proceeds traceable thereto. See Complaint, May 3, 2007, ECF No. 1. On May 7, 2007, at the request of the Parties, the Court entered a Stipulation and Order establishing a procedure for the release of the defendant funds by agreement to a foundation, the BOTA Foundation, to be established to utilize the monies for the benefit of poor children and youth in Kazakhstan. See Stipulation and Order, May 7, 2007, ECF No. 2 (filed on May 8, 2007). Additional terms were attached to and incorporated into the Stipulation and Order by a Memorandum of Understanding between the Governments of the United States of America, the Republic of Kazakhstan, and the Swiss Confederation (the "Three-Government MOU"). *Id.* The Stipulation and Order also attached and incorporated a Service Agreement between the three governments and the International Bank for Reconstruction and Development (the World Bank), in accordance with which the World Bank was to provide assistance in the establishment and oversight of the BOTA Foundation. *Id.* The Three-Government MOU was subsequently amended by a 2008 Amended Memorandum of Understanding between the Governments of the United States of America, the Republic of Kazakhstan, and the Swiss Confederation. The terms of the Stipulation and Order, including each of its attachments, as amended, were expressly incorporated into the Final Order confirming the

agreement of the parties and the procedures for disposition of the assets. See Final Order, May 31, 2009, ECF. 9 (filed June 1, 2009).

In order to ensure the responsible expenditure of the remaining settlement funds, estimated at approximately \$22 million at the beginning of 2014, and the orderly winding-down of BOTA Program operations, the three governments agreed to extend BOTA past its anticipated end date of May 31, 2014, to December 31, 2014. In June 2014, the Parties executed a formal Extension Agreement to extend the terms of the 2008 Three-Government MOU. See Attachment A. The Parties also approved, through an exchange of letters, the extension for the Service Agreement, to align with the December 31, 2014, end date for the BOTA Program. See Attachment B.

Pursuant to the 2009 Final Order, this action is to be dismissed following the release of the remainder of the funds. See Final Order, at ¶ 6. The BOTA Foundation ceased operations on December 31, 2014, and since that time has been in liquidation. On August 28, 2015, the Program Manager advised the parties that a final financial report was being prepared for approval by the three governments. Because that report remains outstanding, the parties respectfully request that this action remain open until such time as the final financial liquidation report is received and any remaining steps to confirm

expenditure of the funds are completed. Within 60 days, the Parties will provide the Court with a final report on execution of the Final Order or a further status report if additional time is required to terminate these proceedings.

[Additional Text on Following Page]

SO ORDERED

Louella G. Presley
LOUELLA G. PRESELY
UNITED STATES DISTRICT JUDGE

9/23/15

Counsel for Plaintiff has conferred with counsel for the Republic of Kazakhstan who has authorized the filing of this Status Report as a Joint Status Report.

Dated: September 11, 2015

Respectfully submitted,

PREET BHARARA
United States Attorney
Southern District of New York

By: /s/ Jason Cowley
Jason Cowley
Chief, Money Laundering and Asset
Forfeiture Unit
One St. Andrew's Plaza
New York, New York 10007
Telephone: (212) 637-1048

M. KENDALL DAY
Chief, Asset Forfeiture and
Money Laundering Section
Criminal Division
U.S. Department of Justice
Washington, D.C.
Attorneys for Plaintiff

/s/ Daniel H. Claman
Daniel H. Claman
Principal Assistant Deputy Chief
Asset Forfeiture and Money
Laundering Section
U.S. Department of Justice
1400 New York Ave., NW
Suite 10100
Washington, D.C. 20005
Telephone: (202) 514-126

ATTACHMENT

A

**Agreement Extending
the Amended Memorandum of Understanding
Among the Governments of
the United States of America, the Swiss Confederation, and
the Republic of Kazakhstan**

WHEREAS, the Governments of the United States of America, the Swiss Confederation, and the Republic of Kazakhstan (each a "Party" and together the "Parties") entered into a 2008 Amended Memorandum of Understanding ("2008 MOU") regarding the establishment of a BOTA Program for the expenditure of restrained funds for the benefit of the people of Kazakhstan;

WHEREAS, the 2008 MOU expired by its terms on April 24, 2013, and the Parties desire to extend the BOTA Program until December 31, 2014, with effect from April 23, 2013, in order to permit the responsible expenditure of remaining BOTA Program funds and the winding down of BOTA Program operations;

WHEREAS, it is the intent of the Parties to incorporate the 2008 MOU by reference in its entirety, except as provided herein;

WHEREAS, on June 1, 2009, the U.S. District Court for the Southern District of New York entered a Final Order incorporating the terms of the 2008 MOU;

WHEREAS, according to **Section 3.13** of the 2008 MOU, the Funds "are expected to be fully disbursed by the Foundation within five years of the Final Order," which would be May 31, 2014, based upon the date of the Final Order;

WHEREAS, **Section 9.1** of the 2008 MOU allows for the extension of the BOTA Program by unanimous agreement of the Parties;

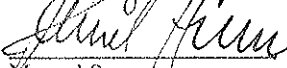
NOW, THEREFORE, the Parties hereto agree as follows:

1. The first sentence of **Section 9.1** of the 2008 MOU shall be amended by deleting "shall continue in force for five years" and replacing it with "shall continue in force until 90 days after the final disbursement of the Funds to the Foundation."
2. The first sentence of **Section 3.13** of the 2008 MOU shall be amended by deleting the phrase "within five years of the Final Order" and replacing it with "by December 31, 2014."
3. This Extension Agreement shall enter into force upon signature by all the Parties, with effect from April 24, 2013.

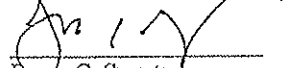
4. Within ten business days of entry into force of this Extension Agreement, the Government of the United States of America shall file a Notice in the United States District Court for the Southern District of New York to seek inclusion of this Extension Agreement into the Stipulation and Order of Settlement.

IN WITNESS WHEREOF, the undersigned being duly authorized by their respective Governments, have signed this Extension Agreement in counterpart originals in the English language.

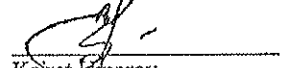
FOR THE GOVERNMENT
OF THE SWISS
CONFEDERATION:


Manuel Sager
Ambassador of Switzerland
to the United States of
America

FOR THE GOVERNMENT
OF THE UNITED STATES
OF AMERICA:


Bruce C. Swartz
Deputy Assistant Attorney
General, Criminal Division
U.S. Department of Justice

FOR THE GOVERNMENT
OF THE REPUBLIC OF
KAZAKHSTAN:


Karat Umarov
Ambassador of Kazakhstan
to the United States of
America

Done at Washington, D.C. this 27 day of August, 2014

Done at Washington, D.C. this 2 day of July, 2014

Done at the city of Washington this 3 day of June, 2014

ATTACHMENT

B



Criminal Division

Deputy Assistant Attorney General

Washington, D.C. 20530

JUL 3 2014

The BOTA Foundation
160, Dostyk Avenue, 3rd Floor
050051, Almaty
Republic of Kazakhstan

RE: United States Approval for the Extension Agreement, the World Bank Service Agreement, and Program Manager Contract

To the Parties:

Enclosed please find the Agreement Extending the Amended Memorandum of Understanding Among the Governments of the United States of America, the Swiss Confederation, and the Republic of Kazakhstan, as executed by the United States. In addition, by this letter, the United States hereby approves the extension of the World Bank's oversight role under the Service Agreement and the Program Manager contract, as set forth in the May 5, 2014, email message from Penny Williams, as prepared by the World Bank on behalf of IREX and the BOTA Foundation and endorsed by the Board of Trustees and the World Bank:

- Decision 1 – extension of the Program Manager contract until the end of the BOTA program to December 31, 2014;
- Decision 2 – extend the World Bank's oversight role under the Service Agreement until the end of the BOTA program to December 31, 2014.

The United States also acknowledges that it is hereby notified of the revision to the Supervisory Agreement to reflect the December 31, 2014, end date of the BOTA Program, as signed by the Chairperson of Board of Trustees of BOTA Foundation and the World Bank.

Sincerely,


Bruce Swartz
Deputy Assistant Attorney General

Enclosure:

- Agreement Extending the Amended Memorandum of Understanding Among the Governments of the United States of America, the Swiss Confederation, and the Republic of Kazakhstan, as executed by the United States



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Federal Department of Foreign Affairs FDFA

Swiss Agency for Development and Cooperation SDC
Global Cooperation GC
Global Institutions Division GI

CH-3003 Bern, DEZA

The BOTA Foundation
Attn. Mr. Aaron Bornstein, Executive Director
160, Dostyk Avenue, 3rd Floor
050051 Almaty
Republic of Kazakhstan

Reference: 2014-08-25/64 (662/2013/0835)

Your reference:

Our reference: SBX

Berne, 29 August 2014

Switzerland Approval for the Extension of: 1) the World Bank Service Agreement and 2) the Program Manager Contract

To the Parties

By this letter, Switzerland hereby approves the extension of the World Bank's oversight role under the Service Agreement and the Program Manager contract, as set forth in the email message of 5 May 2014 from Ms. Penny Williams, as prepared for the World Bank on behalf of IREX and the BOTA Foundation and endorsed by the Board of Trustees and the World Bank:

- Decision 1 – extension of the Program Manager contract until the end of the BOTA program to December 31, 2014;
- Decision 2 – extend the World Bank's oversight role under the Service Agreement until the end of the BOTA program to December 31, 2014. This decision has a budgetary implication for the Government of Kazakhstan decided upon between the Government of Kazakhstan and the World Bank in a contract signed on 14 February 2014.

Switzerland also acknowledges that it is hereby notified of the revision to the Supervisory Agreement to reflect the December 31, 2014 end date of the BOTA Program, as signed by the Chairperson of Board of Trustees of BOTA Foundation and the World Bank.

At this stage, Switzerland would like to thank IREX and the BOTA Foundation for their valuable work to BOTA, and thank the Parties for the fruitful cooperation.

Yours sincerely,

Global Institutions


Olivier Bürki, Minister
Head of Global Institutions Divisions

Swiss Agency for Development and Cooperation SDC
Olivier Bürki
Freiburgstrasse 130, 3003 Berne, Switzerland
Tel. +41 58 462 86 09, Fax +41 58 464 13 47
olivier.burki@eda.admin.ch
www.sdc.admin.ch

ҚАЗАҚСТАН
РЕСПУБЛИКАСЫНЫҢ
ПРЕМЬЕР-МИНИСТРІ



PRIME MINISTER
OF THE REPUBLIC
OF KAZAKHSTAN

1-510
05.09.2014

To the Parties,

We have reviewed the BOTA Foundation 2014 Workplan Update and accompanying final budget approved by the Board of Trustees and the World Bank.

The Republic of Kazakhstan hereby approves the 2014 Workplan Update, as well as the transfer of remaining funds available from the Pictet & Cie Swiss bank account to the BOTA Foundation.

In addition, we approve the extension of Program Manager contract and the Service Agreement until December 31, 2014.

We would like to take this opportunity to express gratitude for our fruitful cooperation.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Kd'.

Karim Massimov